

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: MSBU Program: Wall Reconstruction Projects

DEPARTMENT: Fiscal Services

DIVISION: MSBU

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MOTION/RECOMMENDATION:

Staff is requesting direction from the Board relative to accepting applications for wall reconstruction projects for funding consideration through the MSBU format.

County-wide

Kathy Moore

BACKGROUND:

The two authorized MSBU wall reconstruction pilot site projects have been completed. Staff is requesting direction from the Board relative to accepting applications for additional wall reconstruction projects for funding consideration through the MSBU format.

The primary benefits of offering wall reconstruction as a project type available through the MSBU format include:

- Property owners are provided a funding alternative for acquiring a community improvement
- A means is provided for securing an improvement that, if left unaddressed, would be a potential code enforcement issue, and/or a detriment to the community as a whole

The primary drawbacks of offering wall reconstruction are:

- Construction projects carry an inherent liability to the County
- Wall reconstruction is a project type outside the core project parameters pursued by the Public Works Department.
- Construction projects are labor intensive from County staff support perspective

The primary benefits of extending the material options to include pre-cast concrete include:

- Improved affordability when owners do not have the resources for other, more costly materials and/or structures
- Requires minimal design/engineering components
- Reduced payback term

Should the Board wish to include wall reconstruction projects as part of the MSBU program, staff recommends the following as basic criteria for accepting applications and for

establishing a MSBU for wall reconstruction:

A) Application Criteria:

- Existence of a deteriorating wall
- Community has limited (or no) means to levy/enforce an private assessment
- Letter(s) of Intent for temporary easement/leasehold (with rights to access) to be granted County
- Construction material requested is brick, block/stucco, or precast concrete
- Applicant [1] will provide sealed design/engineering plans suitable for public bid/procurement, [2] will substantiate ability to fund preliminary engineering, or [3] requests precast concrete construction that does not require design/engineering
- Wall reconstruction activity limited to 1 active project per fiscal year or as is determined feasible per availability of existing staff

B) MSBU creation criteria:

- Community support of 65% or greater (documented via the MSBU petition process)
- Compliance with the County Administrative Code & MSBU Program Guidelines
- Availability/Enactment of easement/leasehold (with rights to access) to be granted County
- Advisement is provided regarding the long-term benefit to the community for establishing future provisions for community sponsored resources to address easement/leasehold and maintenance concerns
- BCC Approval

The following approaches for structuring wall projects (based on project phases) and calculating assessment based on cost components are proposed:

- Approach A: Demolition & Construction,
- Approach B: Demolition, Pre-Paid Design and Construction
- Approach C: Demolition, Design and Construction
- Approach D: Precast Concrete

Direction/approval on the following is requested:

1. Direction to include or reject wall reconstruction projects as part of the County's MSBU Program;
2. Approval of the revised criteria;
3. Approval of the four project approaches.

STAFF RECOMMENDATION:

Staff recommends the noted criteria for wall reconstruction projects.

ATTACHMENTS:

1. Wall Projects - Overview & Issues

Additionally Reviewed By:

☒ County Attorney Review (Ann Colby)

MSBU - WALL PROJECTS

I. MSBU WALLS – Background History

The discussions of accepting wall reconstruction as an approved project type for MSBU funding date back to 1988. At that time, the issues of concern were petition guidelines of 55% property owner approval, the necessity of dedication of easements, the County being granted right of access to personal property prior to the establishment of the MSBU, the difficulty of obtaining bids from qualified vendors, liability for the County, and discontent among property owners relative to wall design, building materials, and extent of maintenance.

In 1992, the BCC approved revised MSBU Procedures/Guidelines that excluded wall reconstruction from the MSBU project types due to the issues previously noted. This decision was subsequent to a wall project that was laden with troublesome obstacles, public controversy and tumult. In this and subsequent revisions, the MSBU Program's purpose to provide for the construction of essential improvements (as specified in Florida Statutes Chapter 170) is emphasized.

In 1997, the BCC instructed staff to research the feasibility of wall MSBUs and provide alternatives in response to continued requests from citizens for the wall construction services. The requested information was submitted during a work session in 1998. The Neighborhood Improvement District format was offered as an alternative to an MSBU. However, establishing this type of district is a much more complex process and expensive task for the property owners. After considering the alternatives, the BCC chose the MSBU format of assisting property owners, over the Neighborhood Improvement District and/or no County involvement. Staff was advised to develop procedures for subdivision wall MSBUs.

In 2000, the BCC instructed the MSBU Program to implement wall reconstruction on a pilot site basis using revised guidelines and procedures. The guidelines for accepting and processing pilot site application included the following conditions:

- Existence of a deteriorating wall
- No legal means to enforce collection of an assessment
- 65% approval via the petition process
- Provisions for County ownership of property, County given rights to access
- Property owners would bear the expense of necessary title searches and dedications of land
- Limitation on choices of color, design, and materials for walls
- Limits on wall maintenance
- No provisions for landscaping or irrigation maintenance

The Sunrise subdivision (Commission District 1) was selected as the pilot site (with a criteria waiver as the subdivision had a mandatory homeowner association). The wall reconstruction efforts associated with this pilot project were discontinued following determination that 100% of the owners with property abutting the wall were not agreeable to granting the required easements for the construction.

In 2002, the MSBU Program requested approval for 2 new pilot sites [Commission District 1: Oak Park/Belle Meade and Garden Lake Estates] and authorization to proceed with revised applications and procedures based on obstacles experienced while working the prior pilot site. The Oak Park pilot site continued through to successful completion in 2006. The Garden Lake Estates project was withdrawn by the applicants, as the wall reconstruction was funded through the Dike Road widening project. Tamarak/Charter Oaks (Commission District 1) was granted pilot site approval in lieu of Garden Lake Estates.

In 2005 [February], an MSBU was created for the Tamarak/Charter Oaks wall project. The Tamarak/Charter Oaks project was a design plus construction project associated with a subdivision without a mandatory homeowner association to support the funding of the project. The project was posted for bid 5 times with variation in service scope in effort to attract affordable and viable bids. The response to the postings included no bids, high/unreasonable bids, unqualified bidders, and bids above the authorized price range. In August 2007, a contract was awarded. Construction was initiated in November 2007 with final project closure in early 2008.

II. MSBU WALLS – Feasibility Issues

Subjectivity of Design and Affordability

As presented previously to the BCC, the MSBU Program is the most convenient method for property owners to achieve their community improvement goals. Subdivision walls provide varying degrees of safety, security, and sound/light abatement as they serve as barriers between roadways and residential areas. The type of wall structure selected may offer an aesthetic improvement as well. When an existing wall is deteriorating, the need for repair, replacement or removal contributes to the essential nature of securing reconstruction.

Although the functional purposes served by a parameter wall, or sound barrier structure are noted, the resulting material and design of the structure is often aesthetic in nature. Personal preferences (aesthetic perspectives), followed by affordability factors are key components of wall related discussions and decisions. Both factors are subjective and may vary considerably among the impacted property owners. Such subjectivity can lead to disagreement and discontent in the community. Currently, draft procedures allow for construction of a brick or block wall which limits the materials, but design is variable. As experienced with the second pilot site [Charter Oaks], these materials can present affordability issues to some communities. The petition process provides opportunity for establishing a majority opinion regarding the details of the project, which include design and material parameters. The inclusion of precast concrete panels will assist in addressing variations in affordability by offering a less costly alternative while adhering to standard building code.

Issue of Benefit

The benefit to various properties located within the boundary of the wall is occasionally challenged by owners of non-abutting property. Whereas, a property abutting the wall receives a greater benefit than a non-abutting property, the abutting property often experiences expenditures for relocating easement items and often carries the burden of

long-term liability and loss of land use due to easement/leasehold requirements. The owners of property internal to a subdivision (non-abutting property) have expressed the view of receiving no tangible benefit from the structure. While some owners embrace the concept that the wall is of benefit to the community as a whole, and as such the benefit is transferred to all properties within the community, other owners do not agree that a benefit is provided to properties other than those abutting the wall. To best address the variation in benefit, the procedures have been modified so that abutting properties are assessed 1.25 benefits units [.1 unit for noise attenuation, .15 unit for glare abatement, and 1 communitywide unit] while non-abutting properties are assessed 1 benefit unit. From a majority perspective and based on various efforts to establish community support for wall reconstruction projects, this prorated allocation of benefit has been acceptable to the impacted property owners.

Public vs. Private

Statutorily, the improvements funded through the MSBU format need to be for public purposes and constructed on public property. In most instances, the existing walls are located on private property. In some cases, the wall is located multiple properties in which each owner owns the land under a segment of the wall; in other cases, the land is held in common ownership via a Homeowner Association or similar status of ownership. To date, the wall projects have met the public property criteria via temporary easements and leaseholds. However, in the course of meeting this criterion, the County may take on an unspecified degree of risk and liability for the constructed wall during the payback term of the MSBU.

Legal counsel advises that an alternative would be for the land on which the wall resides (formerly referred to as easement) to be deeded to the County for the duration of the construction, and “after construction, the property owners must agree, in writing, that all ownership rights and liabilities for the wall, as well as all maintenance responsibilities, are therefore assumed by the property owners.” A drawback of this alternative approach, relative to acceptance of a project, may reside with the abutting land owners objecting to long-term or permanent, which could block opportunity to utilize the funding MSBU format.

Wall Maintenance

As a continuing concern, once the wall is built, the land owner(s) assume responsibility for the maintenance of the wall. For walls in which the land has not been deeded to a central entity with assessment levying and collection authority, the original maintenance obstacle continues -- no legal means for financing wall maintenance and/or repairs for the “community common grounds”.

Per current procedures, the land on which the wall is built remains under the original ownership – whether that is a single ownership of an HOA or multi-owners as per abutting properties. The liability for the wall and the financial accountability for repairs follow the ownership. Establishing formal provisions whereby the community has ownership and maintenance responsibility for the wall (following construction) would be in the long-run best interest for the community. However, ensuring the means for establishing the responsibility and funding authority would require the community establish an entity for these purposes. The process would be similar to establishing a formal homeowners association, but for wall maintenance purposes. The process is quite cumbersome, and perhaps overwhelming as voluntary agreement from all owners is required as a step in establishing the deed restriction agreements. To overcome the

maintenance/liability issues, an alternative would be for a group of interested property owners to voluntarily incorporate a wall maintenance entity. However, such an entity would have limited authority to collect the funds necessary to maintain the structure. Additionally, the abutting land owners may object to granting long-term leaseholds, which could block opportunity to utilize the funding MSBU format.

To date, as part of the application process, the applicants for wall projects, as well as the participating property owners, are advised to consider long-term solutions for wall repair and maintenance issues.

Pilot Project Obstacles

Six wall projects have been addressed through the MSBU Program (refer to attached listing) – three completed and 3 withdrawn from continued pursuit. The following issues are noted to be relative to all projects attempted:

- Community support – varies considerably, from strong support to strong opposition
- Community opinion – the most intense and repetitive communication of viewpoints have tended to be those that are in opposition to the project
- Affordability concerns – questions are generally raised in regards to what happens if a property owner cannot afford the assessment
- Difficult in securing bids – several project postings have failed to receive responsive bids, repetitive posting of projects is required to obtain a contract, project cost can be negatively impacted by these delays
- Difficulty in securing bids when design plans are not defined – (a) cost tends to be greater given the unknown of final design plans, (b) few companies are interested in full project management given the broad scope of design and construction, (c) potential bidders have expressed preference for separation design/engineering from the construction
- Functional inability to obtain design/architectural engineering separate from construction services - If applicants are unable to afford prepayment of design work, it is risky to separate the two steps (design & construction) since the design cost must be paid even if the project is canceled due to the construction bid cost exceeding the affordable range set by owners. Property owners would be dissatisfied with the process if they were assessed for the wall design expense without the added benefit of a constructed wall.
- Cost Estimates vs. market changes – The potential time frame between preparing rough cost estimates for petition purposes and the availability of responsible bid can lead to higher rates that potentially jeopardize the project.
- Re-Petitioning when cost or design changes – When cost projections exceed the petition estimate parameters, or if material or design changes are required to accommodate affordability issues, re-petitioning is required. The outcome of the petition is uncertain and the financial risk may increase given the additional expenditures associated with design plans.
- Availability of architectural drawings/design engineering – Projects can be accommodated more efficiently and effectively when the applicants provide certified design plans.
- Project management – intense demand on County staff, both Public Works and MSBU Program. Alternative of contracting a construction project manager would detract from the affordability of these projects.
- Easement & Leasehold requirements – All owners abutting the wall must voluntarily grant easement. All owners of land on which the wall is built must

voluntarily grant leasehold. If any owner is unwilling to provide the required easement or leasehold the project ceases.

- Future funding for maintenance & liability – difficulties noted in above paragraphs

Project Management & Staff Support

Wall reconstruction projects demand considerable attention, and therefore sufficient staff-hours must be dedicated to supporting the projects. The staff-hours will vary according the project specifics, and include MSBU Program staff, Public Works Engineering, County Attorney office and administrative support services from various county management offices (Commissioners and County Manager). The attached estimate detailing support activities conducted by County personnel suggests that the minimum staff-hours required in support of a typical construction only wall project may easily range between 275 and 400 staff-hours depending on the type of project requested by the applicant.

Given current staffing level and task commitments, one active wall project, and no more than two active wall projects should be considered during a single fiscal year.

SUMMARY

The benefits of offering wall reconstruction as a project type available through the MSBU format include:

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The drawbacks of offering wall reconstruction are:

- Construction projects carry an inherent liability to the County
- Wall reconstruction is a project type outside the core project parameters pursued by the Public Works Department.
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MSBU Program - Wall Projects

Cedar Ridge

- Project completed. Difficulties noted.
- Project corresponded with Howell Branch Road widening project
- No home owner association to fund maintenance of common grounds
- Owners disinterested in funding an MSBU for wall maintenance. Landscape and grounds maintenance MSBU was initiated following wall construction.

Sunrise

- Discontinued. Unable to obtain the easements required from abutting property owners.

Belle Meade (Oak Park)

- Successful project/completed. Construction Only.
- Mandatory Home Owner Association with financial resources to obtain design and engineering services
- High level of interest and cooperation within benefiting community

Garden Estates

- Discontinued. Requested MSBU to fund upgrade from concrete block to brick in association with Dodd Road widening project.

Tamarak (Charter Oaks)

- Successful project/completed. Design & Construction project.
- No home owner association to support design & engineer
- Support above 65% and all required easement/leasehold granted
- Posted project for bid 5 times. Range of response included no bids, high/unreasonable bids, unqualified bidders, and bids above the authorized price range

Willa Grove

- Discontinued. Failed to gain the required 65% community support
- High level of community interaction and controversy over project
- Received objection and commentary as to (1) County being involved in private matters, (2) County accepting a construction project that would yield an improvement on private property, (3) County potentially mandating allocation of cost to the entire community, (4) Fraudulent/manipulative statements made by neighbors, (5) Allegation of inappropriate use of insurance payments, (6) Disagreement with decisions as to the desired structure, (7) Inability to provide maintenance funding, (8) Disagreement regarding definition of benefit, particularly assigning benefit to properties that do not abut the wall

Estimate Staff-Hour Support for Wall Projects

I Pre-Application Phase – inquiries, presentations, meetings, general evaluation

MSBU Program	15
Public Works Engineering	5
County Attorney	2
District Commissioner	.5
County Management	<u>.5</u>
	23 staff hours

II Application Processing Phase – review, cost estimate, documentation preparation, inquiries, presentation, meetings, tracking, correspondence, advertising, public hearing, budgetary provisions

MSBU Program	40 (plus 20 for Design/Construct]
Public Works Engineering	25 (plus 20 for Design/Construct]
County Attorney	6
District Commissioner	2 (plus 4 Design/Construct]
County Management	<u>3</u> (plus 4 Design/Construct]
	76 staff hours (plus 48 Design/Construct]

III Construction Phase – scope preparation, bid preparation & posting, selection process, administrative approvals, correspondence, site coordination, site inspections, project management, inquiries

MSBU Program	40 (plus 40 Design/Construct]
Public Works Engineering	60 (plus 40 Design/Construct]
Purchasing & Contract	4 (plus 4 Design/Construct]
County Attorney	2
District Commissioner	1
County Management	<u>1</u>
	108 staff hours (plus 84 Design/Construct]

IV Repayment Phase – final public hearing, budgetary provisions, assessment processing, assessment collection, early payoff calculations, satisfaction of lien document processing

MSBU Program	40
Public Works Engineering	20
County Attorney	6
District Commissioner	2
County Management	<u>1</u>
	69 staff hours

Total 276 staff hours (plus 132 staff hours for Design/Construct]